IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 6TH SEPTEMBER 2007 / 15TH BHADRA 1929

CRP.No. 1616 of 1998(H)

AGAINST THE ORDER DATED 06/08/1998 IN IA 2501/98 IN OS.350/1992 of ADDL.MUNSIFF COURT,CHERTHALA

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REVN. PETITIONER/CR.PETITIONER/PLAINTIFF:

PREMACHANDRAN, PAZHAKACHIRA VELIYIL,
UZHUVA MURI, PATTANAKKADU VILLAGE.

BY ADV. SMT.SUSEELA R.BHATT

RESPONDENT NO.1/PETITIONER/DEFENDANT NO.5 :
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1. M.N.DAMODARAN, RESIDING AT
MADATHILPARAMBIL, CHERTHALA
NORTH MURI, CHERTHALA NORTH VILLAGE.

RESPONDENTS 2 TO 7/CR.PETITIONERS 2 TO 7/ DEFENDANTS 1 TO 4, 6 AND 7 IN SUIT.
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2. SREENIVAS PAI, RESIDING AT KIZHAKKEDATHU MADATHIL,
CHERTHALA NORTH MURI, NORTH VILLAGE.

3. MATHEW, RESIDING AT MOOLAYIL, IN
DO. DO.

4. JOSEPH, RESIDING AT NEDIAPARAMBIL,
IN DO. DO.

5. CLARAMMA, RESIDING AT DO. DO.

6. RAVEENDRAN, RESIDING AT KANNAKAZHIYIL
OF DO. IN DO.

7. KARUNAKARAN, RESIDING AT PALLIAM
NIVARTHIL, UZHUVA MURI, PATTANAKKADU
VILLAGE.

BY ADV. SRI.S.V.BALAKRISHNA IYER (FOR R7)
SRI.K.S.HARIHARAPUTHRAN (FOR R1)
SRI.C.K.SAJEEV (FOR R1)
SRI.JOHN JOSEPH VETTIKAD (FOR R6)

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 06/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

JP

ORDER ON CMP NO.3264/1998 IN CRP NO.1616/1998

DISMISSED.

SD/-
6/9/07 M.N.KRISHNAN, JUDGE

/TRUE COPY/

P.A. TO JUDGE

JP

M.N.KRISHNAN, J

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C.R.P. No.1616 OF 1998

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Dated this the 6th day of September 2007

O R D E R

This revision petition is preferred against the order of the Addl.Munsiff, Cherthala in I.A.No.2501 of 1998 in O.S.No.350/1992. It was an application filed by the 5th defendant to raise an issue whether he is entitled to protection under Section 106 of the Kerala Land Reforms Act and refer the matter to the Land Tribunal. The court had framed the modified issue No.10 as "whether the 5th defendant is a tenant coming under the K.L.R.Act and entitled to get the benefit under Section 106 of the K.L.R.Act? Thereafter the Munsiff found that since he has no jurisdiction to entertain issue No.10, he referred the issue under Section 125(3) of the KLR Act to the Land Tribunal for adjudication. It is this decision, which is challenged in this revision.

2. The point at issue is directly covered by a decision of the Division Bench of this court reported in ***Govinda Panicker v. Sreedhara Warrier (2000(2) KLT 43).*** The Division Bench held that Section 125(3) only speaks of a question regarding the rights of a kudikidappukaran. We have

already noticed that a lessee seeking protection under Section 106 of the Act is not a tenant by description. He is also not a person on whom any right is conferred by Section 13 or Sections 72 and 72B of the Act. In fact, the transaction in his favour is one which is exempted from the operation of Chapter 11 of the Act by Section 3(1)(iii) of the Act. The court thereafter held that tested in the light of that principle, we are inclined to the view that there is no exclusion of the jurisdiction of the Civil Court either express or by implication in considering and deciding the question arising out of a claim by a person that he is a lessee entitled to the protection of Section 106 of the Kerala Land Reforms Act. .....Only a claim of tenancy coming within the purview of Section 13 of the Act need be referred to the concerned Land Tribunal in terms of Section 125(3) of the Act.

3. In the light of the above decision, it has to be held that the civil court is absolutely competent to consider the question under Section 125(3) of the Act and arrived at a decision. Therefore, the order passed by the Munsiff's court suffers from infirmity and it is set aside. The learned Munsiff is directed to consider the entitlement of the 5th defendant to have the benefit of Section 106 of the K.L.R.Act by himself independently in the

light of the authoritative pronouncement referred to above.

With the above direction, C.R.P. is disposed of .

M.N.KRISHNAN, JUDGE

Cdp/-